IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Pooran Vs. State of Raj.
(D.B. Criminal Appeal No.513/1997)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 23-9-1997 in Sessions Case No.8/1993 passed by Sh. S.K.Jain, RHJS, Special Judge, (Dacoity Affected Area) & Additional Sessions Judge, Dholpur.

2. Natthi Singh @ Natthu Vs. State of Raj.
(D.B. Criminal Appeal No.1359/2003)

3. Natthi Singh @ Natthu Vs. State of Raj.
(D.B. Criminal Jail Appeal No.208/2004)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 19-7-2003 in Sessions Case No.08/1993 passed by Sh. Chhagan Lal Gupta, RHJS, Special Judge, Dacoity Affected Area, Dholpur.

Date of Judgment: January 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr. Nemi Chand Choudhary, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in these appeals is to the judgments dated September 23, 1997 and July 19, 2003 of learned Special Judge, Dacoity Affected Area, Dholpur, whereby Pooran and Natthi Singh @ Natthu, appellants herein, were convicted and sentenced as under:-

Pooran:
U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.1000/-, in

default to further suffer rigorous imprisonment for one year.

U/s.3/25 Arms Act:

To suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer rigorous imprisonment for six months.

The substantive sentences were ordered to run concurrently.

Natthi Singh @ Natthu:
U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for one month.

2. The prosecution story is woven like this:-

Informant Bhagwan das (Pw.1) submitted a written report (Ex.P-1) at Police Station Kotwali Dholpur on September 2, 1992 at 10 PM with the averments that out of two persons who came to the outer door of his house, one Pooran opened fire and caused gun shot injury on the person of Doji, as a result of which Doji died on the spot. On that report case under section 302 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge, Dacoity Affected Area, Dholpur. Since Natthi Singh @ Natthu absconded during trial, the trial proceeded only against Pooran. Charges under sections 302 IPC and 3/25 Arms Act were framed against Pooran, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 17 witnesses. In the explanation under Sec.313 CrPC, Pooran claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced Pooran as indicated herein above.

3. In the event of arrest of absconder Natthi Singh, separate trial

was conducted and learned trial Judge on the strength of 17 prosecution witnesses, convicted and sentenced Natthi Singh under section 302/34 IPC as indicated herein above.

4. Having scanned the record we notice that this court on February 11, 1998 directed learned trial Judge to conduct inquiry about the age of Pooran. Pursuant to the said directions learned trial Judge initiated inquiry and on the basis of testimony of Dr.Adarsh Saxena and Shanti Devi observed that on the date of incident Pooran was below 16 years of age.

5. The finding arrived at against appellant Pooran has not been assailed by learned counsel on merits. The only contention of learned counsel is that since in view of section 2(k) of Juvenile Justice (Care & Protection of Children) Act,2000 (for short `JJ Act') appellant Pooran was juvenile on the date of occurrence, he could not have been ordered to undergo imprisonment as provided by Section 20 of JJ Act.

6. In order to appreciate the submissions advanced before us we deem it necessary to have a close look at the JJ Act which came into existence with effect from April 1, 2001. Section 20 of JJ Act provides special provisions in respect of pending cases and speaks that notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass

orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

7. As per sub rule 2 of Rule 62 of the Juvenile Justice (Care & Protection of Children) Rules,2001 (for short `JJ Rules') all pending cases which have not attained finality, shall be dealt with and disposed of in terms of the provisions of the JJ Act and the JJ Rules made thereunder.

8. Section 6 of the JJ Act provides that Juvenile Justice Board shall deal exclusively with all proceedings under the JJ Act. Sub-section (2) of Section 6 of JJ Act however mandates that the powers conferred on the Board may also be exercised by the High Court and the Court of Sessions when the proceedings come before them in appeal, revision or otherwise.

9. As per section 2(k) of the JJ Act `juvenile' or `child' means a person who has not completed eighteenth year of age. Juvenile in conflict with law in view of section 2(1) means a juvenile, who is alleged to have committed an offence. From the preamble of the JJ Act it appears that the said Act was enacted to consolidate and amend the law relating to juveniles in conflict with law i.e. juveniles who are alleged to have committed the offence. Although the definition of `juvenile' does not indicate that this age is to be seen on the date of occurrence but from the intention of Legislature as appeared from the Preamble we hold that the age is to be seen on the date of occurrence. Three Judge Bench of the Hon'ble Supreme Court in Umesh Chandra Vs. State of Rajasthan (1982)2 SCC 202) propounded that crucial date to determine whether the accused is a juvenile or not, is the date on which the offence was committed.

10. In view of Rule 62(2) of the JJ Rules instant appeal of appellant Pooran comes within the definition of pending case. The date of birth of the appellant Pooran as observed by learned trial Judge is April 4, 1977. Thus on the date of incident appellant Pooran was juvenile and could not have been sentenced in view of the mandate of section 20 of JJ Act.

11. On calculating the age of appellant Pooran as per his date of birth i.e. April 4, 1977, we notice that Pooran has by now completed 29 years and 9 months and therefore it is not possible to send him to an observation home established under section 8 of JJ Act for the purpose of rehabilitation and social integration of a juvenile. In a similar situation, their Lordships of the Supreme Court in Jayendra Vs. State of UP (1981)4 SCC 149 propounded that where accused who was a juvenile on the date of commission of offence, has crossed 23 years of age, he cannot be sent to an approved school in view of his age. Therefore conviction of such an accused was although upheld, the sentence awarded to him was quashed.

12. In yet another case of Bhoop Ram Vs. State of UP (1989)3 SCC 1, Hon'ble Supreme Court indicated as under:- (para 8)

> "Since the appellant is now aged more than 28 years of age, there is no question of the appellant now being sent to an approved school under the UP Children Act for being detained there."

13. That takes us to the appeals preferred by appellant Natthi Singh. A look at the FIR goes to show that Natthi Singh was not named in the FIR. It is stated in the FIR that the person who accompanied Pooran was empty

handed and he did not commit any overt act. Section 34 IPC enacted a principle of joint liability in the doing of a criminal act, that the essence of that liability was to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. It must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of all. Common intention within the meaning of the section implied a pre-arranged plan and to convict the accused of an offence, it should be proved that the criminal act was committed in concert pursuant to pre-arranged plan. In the instant case informant Bhagwan Das (Pw.1) improved his testimony at the trial and deposed that Natthi Singh too had a gun. On examining the testimony of Bhagwan Das (Pw.1) from the point of view of trustworthiness we find him highly unreliable qua appellant Natthi Singh and we are of the view that the prosecution has failed to establish charge under section 302/34 IPC beyond reasonable doubt against appellant Natthi Singh.

14. For these reasons, we dispose of instant matters in the following terms:-

(i) We partly allow the appeal of appellant Pooran and while maintaining his conviction under sections 302 IPC and 3/25 Arms Act, we set aside the sentence awarded to him. The appellant Pooran is on bail, he need not surrender and his bail bonds stand discharged.

(ii) We allow the appeals of appellant Natthi Singh @ Natthu, set aside the finding of conviction and sentence and acquit him of the

charge under section 302/34 IPC. The appellant Natthi Singh @ Natthu, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(iii)The impugned judgments of learned trial court stands modified as indicated above.

(Mohammad Rafiq),J. (Shiv Kumar Sharma)J.

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